IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 244 of 1993

Reserved on: 7.12.2007

Date of decision: December 14, 2007

State of H.P. Appellant.

Versus

Lila Ram Respondent.

Coram

Hon'ble Mr. Justice Surjit Singh, J.

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]?

For the appellants : Mr. Som Dutt Vasudeva, Addl. Advocate General.

For the respondent: : Mr. Rakesh Jaswal, Advocate.

Surinder Singh J.

The State has challenged, in this appeal, acquittal of the respondent for the offence punishable under section 304-II of the Indian Penal Code, for causing the homicidal death of Narata Ram.

In brief prosecution case is that:

On 18.04.1992, in the evening, Narata Ram was walking in a drunken state in Garkhal Bazar. Respondent, who was a constable, posted in Police Post Gharkhal at that time, came across Narata Ram and gave a slap to him, as a result of which Narata Ram struck against the wall of the house and fell

[1] Whether reporters of the Local papers are allowed to see the judgment? yes

down. He sustained fatal injury on his head and died on the spot. Many people gathered there. ASI Udey Ram (PW12) of Police Post Garkhal was informed telephonically by some one at about 7.30 p.m. This information was recorded in the rapat roj namcha (Ex.PW 12/A). This information was passed to S.I. Om Parkash SHO Police Station, Kasauli. ASI Udey Ram (PW12) proceeded to the spot, many persons had gathered there, since it was alleged that the respondent herein was also drunk, therefore, he was medically examined but he was found normal and according to Dr. Rajesh Kashyap (PW8) he had not consumed liquor. His Medico-legal-certificate is Ex.PF.

Ashok Kumar (PW5), son of the deceased was informed by Hemant Kumar, a co-villager that Narata Ram aforesaid was drunk in Garkhal Bazar and he should be brought to the house. On this Ashok Kumar proceeded to Garkhal and reached there around 7.45 p.m. and found that his father had died and his dead body was lying by the side of the wall. Many persons were present there and on inquiry he came to know that respondent had killed his father. SI/SHO Sh.Om Parkash (PW15) had reached the spot and recorded the statement (Ex.PD) of Ashok Kumar (PW5) on the basis of which formal FIR under section 302 IPC was registered. Photographs of the

dead body were taken. Site plan Ex.PW15/B was also prepared. Said Investigating Officer had also prepared the inquest report in the presence of Gopal Singh (PW1) and Thakur Dass (PW2). Thereafter the dead body was sent up for autopsy to the Primary Health Centre Dharampur. Dr.Rajesh Kashyap (PW8) conducted the post mortem and his report is Ex.PH. On examination of the dead body, the Doctor found the following injuries:

1. Lacerated gaped wound over the occipital transversely placed 3 ½ cms in length 1 cm at the centre ½ cms at both the edges 5" from the right ear lobule, piercing the scalp through and through;
2. Abrasion right patella 2 ½ " from the mid of the tibia tuberosity 1 ½ cm X 1 ½ cm in size with bright red colour slightly raised.

There was no visible fracture of scalp under injury No.1. On opening the skull bone meaninges were found normal. There was large hemorrhage into the occiput and posterior craninal fossal on opening the dura. The blood was semi liquid. The echymosis of the brain tissue in the occiput of the brain tissue in the occiput lobe was 1" x 1" in size, spinal cord normal.

On opening of lungs, abdomen, stomach and small intestine, smell of alcohol was present. Rigor mortis was present in all the four limbs. The

viscera was sent for chemical examination. The probable time between the injury and death was immediate. From the report of the Chemical Examiner also, the deceased was found to have consumed alcohol.

The Investigating Officer recorded statement of Gopal Singh (PW1) and Thakur Dass (PW2) the alleged eye witnesses of the occurrence. After completing investigation, the challan was presented in the court for trial against the respondent.

Finding a *prima-facie* case, under section 304-II of the Indian Penal Code, respondent was charge-sheeted, to which he pleaded not guilty and claimed trial.

Prosecution examined its witnesses, the circumstances which were found attended by the respondent were put to him to which he denied. His case, in nut shell was denial simpliciter.

Respondent was called upon to enter into defence but he did not lead any evidence.

At the end of the trial, on the basis of the evidence on record, the learned trial court acquitted the respondent, against which the instant appeal has been filed.

The learned trial court held that statements of the alleged eye witnesses were improbable and contradictory, therefore, they are not reliable.

Secondly, the medical evidence did not conclusively prove that both the injuries found on the person of Narata Ram could be caused in the manner as deposed by the witnesses. Thirdly, the deceased was drunk. Possibility of his falling down on uneven surface cannot be ruled out. Fourthly, there were no blood stains on the wall of the house where the head of the deceased had allegedly struck. Fifthly, possibility of giving beatings by one Sh.Hari Dutt Dangi to Narata Ram could not be ruled out, as these injuries could not be caused by single fall. Lastly, statement of Gopal Singh (PW1) was not promptly recorded, despite his availability. Further statement of Thakur Dass (PW2) was recorded, after interval of 1½ month of the alleged occurrence, by the police.

We have heard and gone through the record of the case.

According to Sh. Som Dutt Vasudeva, learned Additional Advocate General, judgment of the learned trial court is perverse, as the learned trial judge has wrongly ignored the cogent and consistent statement of the alleged eye witnesses duly corroborated by the medical evidence. If these statements are read in the right perspective, offence against the respondent stands proved.

Contra, Sh. Rakesh Jaswal, learned counsel for the respondent, while supporting the impugned judgment of acquittal, has argued that the findings of the learned trial court are borne out from the record. Learned counsel led us through the statement of the witnesses and ventilated that there was no mark of injury on the face of the deceased and further that two injuries, by single slap, could not be caused to the deceased as shown in the Medico-Legal-Certificate and further that abrasion on the right patella is indicative of the fact that the deceased fell or slipped on the road, over a banana bark, therefore, no interference in the impugned judgment of acquittal is called for.

We have given our thoughtful consideration to the rival contentions of the parties and have carefully examined the evidence on record, to find out the truth. As already stated above PW1 Gopal Singh and Thakur Dass (PW2) have been cited as eye witnesses by the prosecution. It is admitted by SI/SHO Om Parkash (PW15) that Gopal Singh (PW1) was a registered "Bad Character" (B.C) in the police record and was convicted in about 20 cases. Gopal Singh, aforesaid, has admitted in his cross-examination that there were many theft cases pending against him at Solan and admitted his

conviction in four cases, but in our view this fact alone is not sufficient to discard his version, if his version, otherwise is found true, therefore, his statement is required to be appreciated carefully as he is alleged to have witnessed the incident. Therefore, we proceed to examine his version since he had mustered the courage to unfold the prosecution story, against the respondent, who was a police constable posted in local police post. According to him, he was running a ***Rehari*** at Garkhal Bazar. He knew the respondent. On 18.4.1992 at about 7.30 p.m. when he was sitting in his Rehari, he saw Narata Ram going towards Dharampur Road. The respondent was behind him. The respondent had put his hand on the back of Narata Ram, when Narata Ram looked back the respondent slapped him, as a result of which he fell down and his head struck against the stone wall. Narata Ram sustained injury on the back of his head and became unconscious. Then he (PW1) came to see Narata Ram. Respondent told him to bring water, but he did not do so as Narata Ram had died. Within 15-20 minutes many people gathered there and ASI who was telephonically informed also reached the spot and took the dead body into his possession. In his cross-examination he has stated that the police had not recorded his

statement when ASI visited the spot. The incident, in question had taken place near the house of one Pishori Lal Khurana and head of the deceased was struck against the wall of his house. The ASI had interrogated and inquired into, the incident from the shopkeepers nearby. The witness has stated that his statement was recorded by the SHO on the next morning at 7 a.m. He was also confronted with his earlier statement wherein it was not so recorded that as a result of slap the deceased had fallen towards the wall of the house of Shri Khurana.

The prosecution also relies upon the testimony of Tirath Dass (PW2) he has made the similar version but according to him, respondent had given two slaps instead of one as stated by PW1, on the face of Narata Ram, as a result of which Narata Ram struck against the stone wall of the house. Admittedly, his statement was recorded by the police after 1½ months of the alleged incident.

According to Udey Ram ASI (PW12), on receiving the information he visited the spot and got the respondent medically examined. According to him, about 250 persons had gathered there. They were in rage against the police. He had requested the SHO to reach the spot.

On the critical examination of the aforesaid material witness, evidence, we find that there is enough corroboration to the statement of PW1 Gopal Singh. His testimony cannot be discarded out rightly on the basis that he was convicted in many cases and several other cases are pending against him. He has clearly and in unambiguous terms stated that the respondent had slapped the said Narata Ram. Though PW2 Thakur Dass has stated having given two blows appears to be to cover up the two injuries found on the deceased but at least the testimony of the alleged eye witnesses to the extent of giving slap are consistent and worth inspiring confidence.

As far as sustaining the fatal injuries to the deceased Narata Ram, as alleged, are concerned, the Doctor in his cross-examination had clearly stated that injuries No.1 and 2 are not related to each other and could not be caused simultaneously. Further that injury No.1 cannot be caused if the deceased had fallen on flat hard surface but the Doctor did not rule out the possibility of causing injury No.1 by skidding over a banana bark. The photograph Ex.PW6/3 also shows presence of banana bark near the dead body. Therefore, in view of the aforesaid evidence it cannot be said that the deceased had sustained the

fatal injury, as alleged. However, as stated above the respondent is proved to have voluntarily caused the simple hurt to Shri Narata Ram punishable under section 323 Indian Penal Code. Accordingly, the respondent deserves to be convicted under section 323 and not under section 304 (II) Indian Penal Code.

Thus ordered accordingly.

Keeping in view the fact that the incident had taken place in the year 1992 and at that time respondent was about 50 years of age and has faced the uncertainty in the case till this stage for more than a decade, therefore, in the facts and circumstances of the case, we extend the benefit of section 3 of the Probation of Offenders act to the respondent. Accordingly he is admonished.

For the reasons aforesaid while upholding the acquittal under section 304 part II of the Indian Penal Code, the judgment of acquittal is partly set aside.

The State appeal is partly accepted.

(Surjit Singh),J.

December 14,2007 (Surinder Singh),J.
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